October 10, 2023

VIA ELECTRONIC SUBMISSION

Ms. Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: **Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealer and Investment Advisers (File Number: S7–12–23).**

Dear Ms. Countryman:

Thank you for the opportunity to comment on the U.S. Securities and Exchange Commission's (the "SEC" or "Commission") proposed rule regarding Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealer and Investment Advisers (the "Proposed Rule").[1]

This letter is submitted by Fairview Cyber, LLC ("Fairview"). Fairview provides comprehensive cybersecurity consulting services to investment advisers and other financial institutions, including drafting cyber and data security policies and procedures, conducting comprehensive cyber and data security testing, and providing threat monitoring.[2]

Fairview appreciates the necessity and importance of regulating the use of predictive data analytics and similar technologies. However, we encourage the SEC to avoid adopting the Proposed Rule as written and respectfully request the SEC to consider the following:

1. **The SEC should extend the comment period for the Proposed Rule.**

The SEC announced the Proposed Rule on July 26, 2023, published it in the Federal Register on August 9, 2023, and required comments to be submitted by October 10, 2023. While we appreciate the opportunity to participate in the rulemaking process and provide comments on the Proposed Rule, a 60-day comment period is inadequate for the public to review this proposal and comprehensively respond to the requirements posed. Sixty days is shorter than the typical comment period allotted by the SEC. An extension would allow firms to further review the proposed rule to assist with determining its potential scope.

2. **The SEC should consider revising the definition of "covered technology" in the Proposed Rule to clarify and narrow the scope.**

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[1] Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. 53960 (proposed Aug. 9, 2023) (to be codified at 17 C.F.R. 240, 275).
[2] For additional information about Fairview, please visit our website at https://fairviewinvest.com/.

Under the Proposed Rule, "covered technology" is defined as "an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes."[3]

As currently written, the definition of "covered technology" is overly broad and would likely cover more technology than the Commission intended to cover. For example, under this definition, technology such as Excel sheets containing macros and statistical tools that are commonly used in the industry to determine investment recommendations would likely be deemed to be covered technology. Covered technology would also include more advanced technology that could be used to meaningfully advance the industry, such as AI tools. The definition of covered technology unnecessarily includes certain technology beyond the scope of the legitimate risk to investors that regulation regarding the use of predictive analytics is intended to address.

Under the Proposed Rule, broker-dealers and investment advisers registered or required to be registered with the SEC would be required to eliminate or neutralize conflicts of interest associated with the firm's use of any current or future covered technology in investment interactions that prioritize the firm's interest above the investor's interest. Additionally, firms that use covered technology in investor interactions would be obligated to maintain prescriptive policies and procedures, including onerous documentation requirements, to prevent violations of the Proposed Rule.

Given the broad scope of covered technology and the substantial requirements under the Proposed Rule, many advisers, especially smaller firms, will limit technology usage if the Proposed Rule is adopted. As a result, increased costs attributable to inefficient processes will be passed on to clients.

Fairview acknowledges the importance of protecting client data and interests. Existing regulatory requirements guard against conflicts of interest. Any additional regulations adopted to supplement these requirements should be clearly defined and limited in scope to avoid conflicting with current regulations. Clear and concise guidance will allow firms to make less cumbersome adjustments to their current compliance programs to align with the Proposed Rule.

We appreciate the SEC's considerations of our comments on the Proposed Rule. Should you have questions concerning our comments or if we can be of further assistance in the Commission's review of the Proposed Rule, please contact the undersigned.

Respectfully submitted on behalf of Fairview Cyber, LLC,

/s/ Amber Allen

Amber Allen

President and General Counsel of Fairview Cyber, LLC

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[3] Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, 88 Fed. Reg. at 53,972.